Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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No. 88-153

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

TEXACO PETROLEUM COMPANY, ECUADORIAN GULF OIL COMPANY and GULF OIL CORPORATION (Now, by change of name, CHEVRON U.S.A. INC.),

Petitioners,

vs.

PHOENIX CANADA OIL COMPANY, LIMITED,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

RESPONDENT'S OPPOSITION TO MOTION OF THE RULE OF LAW COMMITTEE FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

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RESPONDENT'S OPPOSITION TO MOTION
BY THE RULE OF LAW COMMITTEE
TO FILE A BRIEF AS AMICUS CURIAE

Respondent Phoenix Canada Oil Company, Ltd. ("Phoenix") respectfully opposes the motion of the "Rule of Law Committee" to file a brief as amicus curiae in support of the Petition in No. 88-153. The objection is based upon the following grounds:

1. The Petition discloses scant information about the "Rule of Law Committee." It does indicate, however, that this "Committee" is composed of legal representatives of major American multi-national corporations, including Texaco Inc. and Chevron Corporation. Texaco Inc. is the parent company of Petitioner Texaco Petroleum Company and Chevron Corporation is the parent company of both of the other Petitioners (Pet. at vi). These relationships

create a substantial identity between the "Rule of Law Committee" and Petitioners.[1] As a result, the request to submit the proposed amicus brief is in effect an improper request by Petitioners for permission to file a brief in support of their Petition. Rule 21.3 prohibits such a brief. Moreover, the motion fails to set forth what "facts or questions of law that have not been, or reasons for believing they will not adequately be, presented by the parties," as required by Rule 36.3.

2. The Petition in No. 88-153 was filed on July 25, 1988. As extended, the last day for Phoenix to file its

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[1]In addition, Texaco Inc. was a party defendant in the District Court. Due to its 1987 bankruptcy petition, it was not a party to the appeal and is not a petitioner in this Court. Texaco Inc. nevertheless continues to be directly interested in the outcome of these proceedings because it has stipulated to be bound by the result.

response was September 26, 1988. The proposed amicus, although benefitting from this extended period to prepare its brief, did not request Phoenix' consent or otherwise disclose its existence to Phoenix until September 12, 1988. Phoenix immediately refused its consent. The proposed amicus nevertheless waited until September 26, 1988 to serve its motion and proposed brief. Then it served those documents by mail with the obvious intent of preventing Phoenix from seeing them until after it had filed its own brief in opposition to the Petition. Phoenix has thus been deprived of any opportunity to take into account in its brief the authorities and arguments raised by the proposed amicus.

3. The proposed brief takes no account of the following circumstances shown in Phoenix' opposition brief:

(a) that by the admission of Petitioners' own expert, Ecuador requires a line of cases, not a single isolated decision, before judicial decisions begin to have persuasive impact;

(b) that whether or not the Segovia decision is "on point" is in doubt because the materials Petitioners presented to the lower courts did not include English translations of the lengthy and complex proceedings in the Segovia case in the first and second instance courts of Ecuador. This left it open to speculation as to whether the contract in that case, as distinguished from the case at bar, contained a stipulation regarding interest;

(c) The full record, as Phoenix demonstrated in its brief and appendix, shows that lower courts in Ecuador do not obligatorily follow the reasoning of Segovia; on the contrary, it shows that prejudgment interest is routinely calculated by those courts according to the circumstances of the case, and that those courts frequently do "segment" the calculation of prejudgment interest by employing the exact same method used by the lower courts in this case.

4. The proposed amicus brief, while purporting not to take any position with respect to Phoenix' own Petition for Certiorari in No. 88-158 (Proposed Br. at 3 n.2), in fact subtly opposes that petition by means of a

statement contained in the last part of the cited footnote. That statement admits that the issue in No. 88-158 is partly a question of law, and then asserts that in deciding it, the lower courts purportedly "did not announce any broad legal principle that would affect the determination of foreign law issues in other cases." The quoted phrase echoes an argument the Respondents in No. 88-158 have made in opposition to that petition; namely that the issue is not "special and important." The "Rule of Law Committee" does not take note of Phoenix' argument in No. 88-158 that the lower courts in fact subverted the act of state doctrine by (i) failing to apply Ecuadorian laws, decrees and other acts of state which deal precisely with the situation at bar, and (ii) failing to explain why those laws and other

state acts are inapplicable or why the act of state doctrine does not make them determinative. It is unfair for the proposed amicus, by means of a statement in a brief offered for filing in No. 88-153, to attempt to oppose the petition in No. 88-158.[2]

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[2]If anything, the "Rule of Law Committee" should support Phoenix' petition in No. 88-158 because that petition asks this Court to correct the lower courts' failures to respect laws conceded to be applicable to the case.

CONCLUSION

The motion by the "Rule of Law Committee" to file a brief as amicus curiae in support of the Petition for Certiorari in No. 88-153 should be denied.

Dated: New York, New York
October 5, 1988

Respectfully submitted,

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